IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Con.Case(C).No. 151 of 2007(S)

AGAINST THE JUDGEMENT IN WPC.33368/2006 Dated 15/12/2006
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PETITIONER/PETITIONER NO.8:

BIJU K.A., S/O. ANTONY,
AGED 34 YEARS, KANNAMKUNNY HOUSE,
KALLETTUMKARA P.O., TRICHUR DIST.

BY ADV. SRI.A.N.RAJAN BABU
SMT.K.SUNITHA VINOD

2ND RESPONDENT: RESPONDENTS:

MR.V.N.P.KAIMAL, AGED 59 YEARS,
(FATHER'S NAME NOT KNOWN TO THE PETITIONER)
MANAGING DIRECTOR, KERALA FEEDS LTD.,
KALLETTUMKARA, THRISSUR.

BY ADV. SRI.A.M.SHAFFIQUE, SC
SRI.E.K.NANDAKUMAR
SRI.ANIL D.NAIR
SRI.JAYASANKAR.A.K.

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

K.BALAKRISHNAN NAIR, J.

CONTEMPT CASE (C) NO.151/2007 -S

& I.A.369/2007

JUDGMENT

The 8th petitioner in W.P.(C) No.33368/2006 has filed this contempt application, alleging that the direction of this Court in Annexure-A1 order has not been implemented by the respondent. The petitioner and others were included in a rank-list published by the 2nd respondent in the writ petition for appointment as head load workers. When the rank-list was going to expire, they approached this Court, seeking appropriate reliefs. Therefore, this Court issued a direction to the 2nd respondent company to assess the requirement of head load workers with reference to the volume of work in the factory and if there is any dearth, to engage workers from Ext.P2 list in accordance with their rank. The direction was to be complied within three weeks from the date of production of the copy of the order. The order was served on the respondent on 26.12.2006. When the direction of this Court was not obeyed within the time limit stipulated in the order, this contempt application was filed on 22.1.2007.

2. The respondent has filed a counter affidavit in the contempt

application on 15.2.2007, stating that the claim of the petitioners in the writ petition for engagement was considered. But, at present, there is no vacancy of head load workers, having regard to the volume of loading and unloading work in the factory. In the said affidavit, it was asserted that the direction of this Court was obeyed and the claim was considered. But, no formal order or communication was issued to the petitioners. When this position was realised, the respondent has issued Ext.R1(f) communication dated 3.3.2007, containing its decision, taken pursuant to the interim order of this Court.

3. While so, the petitioner filed I.A.No.369/2007, to take action against the respondent for perjury, for making a false statement before this Court. In support of that petition, an affidavit was filed. Along with that Annexures A3 to A5 documents were produced, which would show that the company registered progress in all fields, including production, sales and turnover. Therefore, the petitioner contended that the stand taken in the counter affidavit that there is no increase in the production and therefore, additional head load workers cannot be engaged, is not correct.

4. The respondent has filed a counter affidavit in the I.A., pointing out that in Annexures A3 to A5, it is only stated that there is increase in the production capacity and not the actual production. Though additional

production capacity was achieved, the same has not generated additional vacancies of head load workers, it is submitted.

5. I heard the learned counsel on both sides. They reiterated their respective contentions. The direction of this Court has been obeyed, though belatedly. Therefore, it is not expedient or necessary to refer the matter to the Division Bench for further proceedings in the matter. So, the contempt application is liable to be closed.

6. The next point to be considered is whether this Court should pass an order for prosecuting the respondent for perjury. The claim made in the first page of Annexure-A3 is regarding the increase of production capacity per day from 500 M.T to 650 M.T. But, Annexure-A5 would show that there is an increase in production during the financial year 2006-07 by 10.54%, when compared to the previous financial year. According to the said respondent, the said increase in production has not generated additional employment potential for head load workers. I think, this is a matter which should be considered and decided in the writ petition. This Court cannot order prosecution in all cases, where there is a mistake in the statement made before this Court. The wrong submissions should be made deliberately with an intention to interfere with the due course of justice. Such contumacious conduct polluting the stream of justice alone is treated

as perjury. Having regard to the averments in the counter affidavit, I feel that this is not a fit case for ordering prosecution of the respondent for perjury.

In the result, the contempt application and the I.A are closed. The petitioner may work out his remedy for employment as head load worker in the pending writ petition.

5th October, 2007. **K.BALAKRISHNAN NAIR, JUDGE.**

Nm/